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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MICHAEL ABATTI, as Trustee, etc., et al.,

Plaintiffs and Appellants,

v.

IMPERIAL IRRIGATION DISTRICT,

Defendant and Appellant.

D073521

(Super. Ct. No. ECU07980)

APPEALS from orders of the Superior Court of Imperial County, L. Brooks
Anderholt, Judge. Reversed and remanded.

Musick, Peeler & Garrett, Theodore A. Chester, Jr., Cheryl A. Orr; Caldarelli
Hejmanowski Page & Leer, Lee E. Hejmanowski and Marisa Janine-Page for Plaintiffs
and Appellants.

Nossaman, Frederic A. Fudacz, Jennifer L. Meeker, Gina R. Nicholls and Tara E.
Paul for Defendant and Appellant.

The Imperial Irrigation District (District) supplies water from the Colorado River system to California's Imperial Valley. In 2013, the District implemented an equitable distribution plan with an annual water apportionment for each category of users (2013 EDP), including farmers. Imperial Valley farmer Michael Abatti, as trustee of the Michael and Kerri Abatti Family Trust, and Mike Abatti Farms, LLC (collectively, Abatti) filed a petition for writ of mandate to invalidate the 2013 EDP, challenging the plan on various grounds as unlawful and inequitable to farmers. The superior court granted the petition, issued the writ of mandate, and entered a declaratory judgment in Abatti's favor. The court subsequently awarded attorney fees and costs to Abatti.

In the parties' appeal from the judgment, *Abatti, et. al. v. Imperial Irrigation District* (July 16, 2020, D072850) (Merits Appeal), we affirmed in part, reversed in part, and remanded. In this matter, both parties appeal from the fee and cost orders. We conclude that the orders should be reversed, in light of our partial reversal in the Merits Appeal. The orders are reversed, and the matter is remanded for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

In our opinion in the Merits Appeal, we provided factual background regarding water rights in the Imperial Valley, the District's history, and the District's water management efforts that culminated in the 2013 EDP. We also described the procedural history of the dispute between Abatti and the District, which concluded with judgment in Abatti's favor. After addressing the parties' arguments, we affirmed in part, reversed in part, and remanded for entry of a new and different judgment.

Pertinent to this appeal, Abatti moved for attorney fees under Code of Civil Procedure section 1021.5 and filed a memorandum of costs following judgment. The District opposed the fee request, and moved to strike and/or tax costs. The superior court issued orders granting fees and costs, in part. The District appeals from these orders, arguing that the superior court erred by awarding fees to Abatti under Code of Civil Procedure section 1021.5, by awarding excessive fees, and by awarding certain costs. The District also argues that if we reverse the judgment in the Merits Appeal in any respect, we should reverse the fee and cost orders. Abatti cross-appeals, and challenges the denial of certain fees and costs.

DISCUSSION

We conclude that the partial reversal in the Merits Appeal supports reversal of the fee and cost orders, and we remand for further proceedings. (See *Ventas Finance I, LLC v. Franchise Tax Bd.* (2008) 165 Cal.App.4th 1207, 1212 [reversing attorney fees award following partial reversal of judgment]; *City of Sacramento v. State Water Resources Control Bd.* (1992) 2 Cal.App.4th 960, 978-979 [reversing attorney fees under Code Civ. Proc., § 1021.5, following reversal in mandate proceeding]; *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1284 [" 'order awarding costs' falls with 'reversal of the judgment' "].) We do not reach the parties' other arguments pertaining to the fees and costs awarded.

DISPOSITION

The orders are reversed. The matter is remanded for consideration of new fee and costs requests in light of the new judgment. The superior court shall exercise its discretion regarding whether to award fees and costs.

The parties are to bear their own costs on appeal.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.